

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.8271 OF 2016

ORDER:

This writ petition is filed challenging the order dated 11.03.2016, passed by the 1st respondent-Cooperative Tribunal, in I.A.No.18 of 2016 in C.T.A.No.14 of 2016.

It is the case of the petitioner that by order dated 17.08.1998 issued by the 2nd respondent-Deputy Registrar of Cooperative Society, he was surcharged and was directed to pay a sum of Rs.86,849.55 ps. Challenging the same, the petitioner had filed a Writ Petition No.20190 of 2001, before this Court and this Court had dismissed the said writ petition by an order dated 20.07.2006. Aggrieved thereby, the petitioner filed a Writ Appeal No.1146 of 2006 before a Division Bench of this Court and the same was also dismissed by a judgment dated 15.02.2011. Thereafter, the petitioner appeared to have discovered that the original borrower's loan was paid and to that effect the petitioner submitted a certificate to the respondents and sought refund of the amount of Rs.71,000/- which the petitioner had paid during the pendency of the proceedings before this Court both in the Writ Petition No.20190 of 2001 and Writ Appeal No.1146 of 2006. The refund application of the petitioner was rejected and on the other hand a demand for Rs.86,849.55 ps was issued against the petitioner in Form No.9 dated 22.1.2016. Challenging the same, petitioner filed an appeal in C.T.A.No.14 of 2016, before the 1st respondent-Cooperative Tribunal. Pending consideration of the said appeal, petitioner had also filed an application in I.A.No.18 of 2016 seeking stay of sale notice dated 22.1.2016. The Tribunal after considering the material available on record, dismissed the stay application by an order dated 11.03.2016. Questioning the same, the present writ petition is filed.

As can be seen from the impugned order, it is clear that a sum of Rs.71,000/- was already paid by the petitioner leaving only a sum of Rs.15,849.55 ps, and the sale notice dated 22.1.2016 was issued to the petitioner in Form No.9 mentioning the interest @ 18% p.a with

effect from 30.09.1989. Prima facie a perusal of the surcharge proceedings itself reveals that there is no interest that was ordered to be paid in the surcharge orders. In other words, the liability even assuming the same is to be taken as the liability which has been confirmed by this Court both in the Writ Petition No.20190 of 2001 and as well as in W.A.1146 of 2006 is confined to a sum of Rs.86,849.55 ps. Inasmuch as it is an admitted fact that a sum of Rs.71,000/- has already been paid, the Tribunal ought to have exercised its discretion and stay the payment of the balance amount. In that view of the matter, even ignoring the fact that the claim of the petitioner that the entire loan amount has already been paid by the original loanees so far as the entitlement of the petitioner for grant of stay is concerned, cannot be denied. In that view of the matter, it is a fit case where the order dated 11.03.2016 passed by the 1st respondent- Cooperative Tribunal in I.A.No.18 of 2016 is set aside by granting stay of the sale notice dated 21.2.2016 issued in Form No.9, pending disposal of the main appeal in C.T.A.No.14 of 2016 on the file of the first respondent-Cooperative Tribunal.

Accordingly, the writ petition is allowed setting aside the order dated 11.03.2016, passed by the 1st respondent- Cooperative Tribunal in I.A.No.18 of 2016 by granting stay of the sale notice dated 21.2.2016 issued in Form No.9, pending disposal of the main appeal in C.T.A.No.14 of 2016 on the file of the first respondent-Cooperative Tribunal. No order as to costs.

Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:14.03.2016.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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